

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10837 OF 2019

- 1] Abhijeet Laxman Mele,
Age – Minor, Occ. Student,
Under Guardian of Sister
Anjali Laxman Mele,
Age – 21 years, Occ. Student
- 2] Anjali Laxman Mele,
Age – 21 years, Occ. Student,
Both R/o. Kasoda, Tq. Vaijapur,
Dist. Aurangabad .. Petitioners

VERSUS

- 1] The State of Maharashtra,
Through it's Secretary,
Tribal Department,
Mantralaya, Mumbai – 32
- 2] The Scheduled Tribe Certificate Scrutiny
Committee, Aurangabad
Through its Deputy Director (R) .. Respondents

...
Mr. P.V. Jadhavar, Advocate for petitioners
Mr. S.S. Dande, AGP for respondent - State
...

CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.
DATE : 14-10-2020

ORAL JUDGMENT (PER – SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally, by consent.

2. The tribe claim of petitioners to be of scheduled tribe '*Koli Mahadev*' has been invalidated under decision dated 21-08-2019 by respondent no. 2 - The Scheduled Tribe Certificate Scrutiny Committee, Aurangabad.

3. Mr. Jadhavar, learned counsel for petitioners submits that father of petitioners has been issued validity certificate of being '*Koli Mahadev*' scheduled tribe way back in 2008. There is a long documentary record showing that petitioners' ancestors as well as the younger siblings and relatives belong to '*Koli Mahadev*' scheduled tribe. He particularly refers to that the school admission record of his grandfather Punjaram Bapurao Mele dated 18-07-1951 shows that he belongs to '*Koli Mahadev*' scheduled tribe, so is the case of his real uncle Ramchandra Punjaram Mele, whose school record of 1968 bears the same. Same is the case in respect of another uncle Tulshiram Punjaram Mele, whose school record of 1969. Various other documents bear '*Koli Mahadev*' scheduled tribe.

4. He purports to refer to the documents, as have been enlisted by the committee under paragraph no. 3 of its decision dated 21-08-2019. He emphasizes that while their father has been issued validity certificate, reasons which have purportedly weighed with committee while declining claim for validation of their tribe claim are over-stretched and do not adhere to the factual aspects and the decision is overwhelmed by conjectures and surmises.

5. He submits that in the present matter, the case is even stronger. He further contends that negation, with reference to the affinity to the tribe for given reasons is unsustainable and contends that it is not determinative test. He further refers to decision dated 21-08-2019 in writ petition no. 9162 of 2019 and submits that similar treatment is deserved in the present matter.

6. Apart from aforesaid, his main thrust is that once their father has been granted validity certificate, denial to validate claim of petitioners to the said tribe, is unsustainable and reasons for which it is declined, are not germane.

7. He refers to clutch of decisions by division benches of this court, particularly dated 17-07-2019 in writ petition no. 8681 of 2019 and dated 19-07-2019 in writ petition no. 8093 of 2019. He submits that this court has considered that when father of petitioner has been issued validity certificate of 'Koli Mahadev' scheduled tribe, then petitioner ought not have been denied validity of their claim to be from 'Koli Mahadev' scheduled tribe.

8. He particularly refers to paragraph no. 4 of decision dated 19-07-2019 (*supra*) (page no. 12), reading thus,

"4. We have considered the submissions. It is not disputed that the father of the petitioner is issued with the validity certificate of 'Koli Mahadev' Scheduled Tribe. The paternal cousin Ramesh is also issued with validity certificate of 'Koli Mahadev' Scheduled Tribe. The school entry of the petitioner, his father and grandfather records caste as 'Mahadev Koli'. The

vigilance has not found any interpolation in the said record. The Committee has relied on the school record of Dnyandeo and Rama where the caste is recorded as 'Koli'. Dyandeo and Rama appear to be sons of Nathu, however, they are not shown in the genealogy produced by the petitioner. "

9. Learned Assistant Government Pleader Mr. Dande submits that claim of petitioners has been properly invalidated, for, there appears to be foul play at the instance of petitioners and/or their relatives to the tribe claim, for the word '*Mahadev*' has been interpolated later in most of the record and that the matter accordingly is being proceeded with against the validity granted to petitioners and the impugned order is accordingly justified.

10. It would have to be considered that there is no denial of the factual position that as on the date, committee has not invalidated certificate issued to petitioners' father, *albeit*, it has been referred to that matter is under investigation.

11. This court in similar circumstances in writ petition No. 5641 of 2020 (*Kum. Maseera Parvin d/o Mohd. Asfaque Shaikh and another vs. the State of Maharashtra and others*), while it had been contended on behalf of the State that proposal has been moved for reopening of the proceedings against the family members of petitioners, who are granted validity certificates by the committee, directions have been issued to committee to issue validity certificates to petitioners therein and in case of review of judgment/s in the petition/s, it was

kept open for respondents to proceed against petitioners in accordance with law.

12. In the decision in writ petition No. 9056 of 2019 (*Ganesh s/o Sudhakar Bodhgire vs. The State of Maharashtra*) dated 21st August, 2019, wherein taking into account the decision of division bench of this court in the case of *Apporva Vinay Nichale vs. Divisional Caste Certificate Scrutiny Committee No.1 and others*, reported in 2010(6) *Mh.L.J.* 401, which was based upon the Supreme Court judgment in the case of *Raju Ramsing Vasave vs. Mahesh Deorao Bhivapurkar and others*, reported in (2008) 9 *SCC* 54, the division bench has considered it expedient to follow the suit of the same and directed to issue tribe validity certificate to the petitioner therein forthwith. The decision further refers to that if the proceedings for cancellation of caste validity holders are answered against such certificate holders, it would be open for the committee to issue show cause notice to petitioner, as to why validity certificate granted to him should not be cancelled and keeping it open for the committee to take those proceedings to its logical end. The decision further particularly refers to that certificate issued to the petitioner, would be subject to the outcome of proceedings for cancellation of validity issued in favour of his blood relatives.

13. Having regard to decisions and facts and circumstances in foregoing discussion, it appears to be expedient to set aside

impugned order and direct issuance of validity certificate to petitioner, subject to decision in re-opened case.

14. Thus, the impugned order dated 21-08-2019 passed respondent no. 2 – Scheduled Tribe Certificate Scrutiny Committee, Aurangabad is set aside. Respondent No. 2 shall forthwith issue validity certificate to the petitioner as belonging to "*Koli Mahadev*" scheduled tribe. The same would be subject to the decision that would be taken by the committee in the proceedings reopened of the validity holders relied upon by the petitioner. In case, the validity certificates issued to the validity holders relied upon by the petitioner are cancelled, then the petitioner may not be in a position to claim any equities and it would be open for the committee to take recourse as per law.

15. Rule is made absolute accordingly. Writ petition is disposed of.

16. Parties to act upon authenticated copy of this order.

17. Needless to refer to that this order shall not influence the proceeding reopened by the respondent no. 2 - Committee in respect of validity holders.

[R.G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE

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